

NATIONAL RECOVERY ADMINISTRATION

**AMENDMENT TO
CODE OF FAIR COMPETITION
FOR THE
BUILDERS SUPPLIES TRADE**

AS APPROVED ON OCTOBER 25, 1934

BY

PRESIDENT ROOSEVELT



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Approved Code No. 37—Amendment No. 2

AMENDMENT TO CODE OF FAIR COMPETITION

FOR THE

BUILDERS SUPPLIES TRADE

As Approved on October 25, 1934

BY

PRESIDENT ROOSEVELT

EXECUTIVE ORDER

AMENDED CODE OF FAIR COMPETITION FOR THE BUILDERS SUPPLIES TRADE

An application having been duly made, pursuant to and in full compliance with the provisions of Title I of the National Industrial Recovery Act, approved June 16, 1933, for my approval of an amended Code of Fair Competition for the Builders Supplies Trade, and hearings having been held thereon and the National Industrial Recovery Board having rendered their report containing an analysis of the said amended Code of Fair Competition together with their recommendations and findings with respect thereto, and the National Industrial Recovery Board having found that the said amended Code of Fair Competition complies in all respects with the pertinent provisions of Title I of said Act and that the requirements of clauses (1) and (2) of subsection (a) of Section 3 of the said Act have been met:

NOW, THEREFORE, I, Franklin D. Roosevelt, President of the United States, pursuant to authority vested in me by Title I of the National Industrial Recovery Act, approved June 16, 1933, do hereby incorporate by reference said annexed report and do find that the Code as constituted, after being amended, complies in all respects with the pertinent provisions and will promote the policy and purposes of said Title of said Act, and do hereby order that the Code as amended be and it is hereby approved, and that the previous approval of said Code is hereby modified to include an approval of said Code in its entirety as amended.

FRANKLIN D. ROOSEVELT.

Approval recommended:

NATIONAL INDUSTRIAL RECOVERY BOARD,

By G. A. LYNCH, *Administrative Officer*.

THE WHITE HOUSE,

October 25, 1934.

LETTER OF TRANSMITTAL

The PRESIDENT,
The White House.

SIR: This is a report on the Code of Fair Competition for the Builders Supplies Trade of the United States, as amended, the hearings having been held in Washington, D. C., on July 26, 1934, and on August 9, 1934, in accordance with the policies of the National Recovery Administration.

Your approval of this Code, as amended, will have the effect of promulgating a new Code for the Trade, which it is estimated employs in excess of 50,000 persons.

This Code, as amended, is sponsored by the National Federation of Builders Supply Associations which is empowered by the Code of Fair Competition for the Builders Supplies Trade Industry to propose amendments.

The principal change in this Code, as amended, is the establishment of an open price policy which coincides with the policy of the National Recovery Administration. As amended, this Code contains a prohibition against the handling of goods which have not been purchased from a vendor who does not represent that he is complying with his respective Code of Fair Competition.

The Deputy Administrator in his final report to the National Industrial Recovery Board on said amendments to said Code having found as herein set forth and on the basis of all the proceedings in this matter;

It finds that:

(a) The amendments to said Code and the Code as amended are well designed to promote the policies and purposes of Title I of the National Industrial Recovery Act including the removal of obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof, and will provide for the general welfare by promoting the organization of industry for the purpose of cooperative action of labor and management under adequate governmental sanction and supervision, by eliminating unfair competitive practice, by promoting the fullest possible utilization of the present productive capacity of industries, by avoiding undue restriction of production (except as may be temporarily required), by increasing the consumption of industrial and agricultural products through increasing purchasing power, by reducing and relieving unemployment, by improving standards of labor, and by otherwise rehabilitating industry.

(b) The Code as amended complies in all respects with the pertinent provisions of said Title of said Act, including without limitation sub-section (a) of Section 3, sub-section (a) of Section 7 and sub-section (b) of Section 10 thereof.

(c) The Code empowers the National Federation of Builders Supplies Associations to present the aforesaid amendments on behalf of the Trade as a whole.

(d) The amendments and the Code as amended are not designed to and will not permit monopolies or monopolistic practices.

(e) The amendments and the Code as amended are not designed to and will not eliminate or oppress small enterprises and will not operate to discriminate against them.

(f) Those engaged in other steps of the economic process have not been deprived of the right to be heard prior to approval of said amendments.

For these reasons, this Code, as amended, is recommended for approval.

For the National Industrial Recovery Board:

G. A. LYNCH,
Administrative Officer.

OCTOBER 25, 1934.

AMENDED CODE OF FAIR COMPETITION FOR THE BUILDERS SUPPLIES TRADE

To effect the policies of Title I of the National Industrial Recovery Act, this Code is established as a Code of Fair Competition for the Builders Supplies Trade and its provisions shall be the standards of fair competition for such Trade and be binding upon every member thereof.

I. DEFINITIONS

1. *Builders Supplies.*—The term “Builders Supplies” as used herein is broadly defined as those products used in building and construction work and commonly designated as fire resistant. The term “Builders Supplies” as used herein specifically comprehends the following products:

Brick Mortars, Casement and Steel Sash, Cement and Cement Products, Cement Pipe, Ceramic Tile, Clay Roof Tile, Common Brick, Cut Stone, Dampers and Fireplace Accessories, Drain Tile, Face Brick, Fire Brick and Clay, Glazed Structural Tile, Gypsum Products, Hollow Tile, Lime and Lime Products, Mesh Reenforcement, Metal Lath and kindred products, Mineral Aggregates, Mortar and Cement Colors, Molding Plasters, Roof and Flooring Slates, Sewer Pipe, Flue Lining and other Clay Products, Structural Terra Cotta and Waterproofing Compounds.

2. *Member of the Trade.*—The term “member of the Trade” as used herein includes any individual, partnership, association, corporation, or other form of enterprise engaged in the Trade, either as an employer or on his or its own behalf.

3. *Voluntary Agreement Member.*—The term “Voluntary Agreement Member” shall include any member of the Trade who shall have become a member of the agreement as hereinafter provided in Article VIII.

4. *Builders supplies trade.*—The term “Builders Supplies Trade” or “Trade” as used herein includes the selling and/or distributing to contractors or consumers of any or all builders supplies hereinabove defined. In the event that the application of this section is the subject of a dispute with a member of any other trade or industry subject to any other Code of Fair Competition which purports to have jurisdiction over the sale of any builders supplies, approved pursuant to the provisions of the National Recovery Act, this section shall not apply to members of such other trade or industry until such time as the dispute has been reviewed and determined by the procedure established in Article VI, Section 10, Subsection (c), and the finding reached makes this section applicable.

5. *Employee.*—The term “employee” as used herein includes any and all persons engaged in the Trade, however compensated, except a member of the Trade.

6. *Employer*.—The term “employer” as used herein includes any one by whom any such employee is compensated or employed.

7. *Code Authority*.—The term “Code Authority” as used throughout this Code refers to the Administrative Committee of this Code as established in Article VI hereof.

8. *Federation*.—The term “Federation” as used herein shall mean the National Federation of Builders Supply Associations. The term “federated group” shall mean any association or group federated with the National Federation of Builders Supply Associations.

9. *President, Act and the Board*.—The terms “President”, “Act” and “Board” as used herein mean respectively, the President of the United States, Title I of the National Industrial Recovery Act and the National Industrial Recovery Board.

10. *Competitive area*.—For the purpose of administering this Code, a “Competitive Area” is defined as an economic market having such geographical boundaries as shall be accepted and approved by a truly representative group of members of the Trade doing business therein, but subject to review and approval by the Code Authority and to approval by the National Recovery Administration.

11. *Population*.—Population for the purpose of this Code shall be determined by reference to the latest Federal Census.

II. RIGHTS OF LABOR

1. (a) Employees shall have the right to organize and bargain collectively through representatives of their own choosing and shall be free from the interference, restraint, or coercion of employers of labor or their agents in the designation of such representatives or in self organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

(b) No employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing.

(c) Employers shall comply with the maximum hours of labor, minimum rates of wages, and other conditions of employment approved or prescribed by the President.

2. An employer shall so administer work in his charge as to provide the maximum practicable continuity of employment for his work force.

III. HOURS OF LABOR

1. No employee shall be permitted to work in excess of forty (40) hours in any one week, or eight (8) hours in any one day, except as herein otherwise provided.

2. *Exceptions as to hours*.—(a) The provisions of this Article shall not apply to outside salesmen, night and Sunday watchmen, to one branch yard manager for each branch yard and to persons employed in a managerial or executive capacity who earn regularly thirty-five dollars (\$35.00) per week or more.

(b) Employees of members of the Trade employing not more than two (2) persons, in towns or places of less than 2,500 population, which towns and places are not part of a large trading area, as defined in Article IV, may be permitted to work forty-eight (48)

hours in any one week if at least sixty-six and two-thirds percentage of the sales volume of said members of the Trade is to persons engaged in agriculture; such employees may be permitted to work in excess of forty-eight (48) hours in any one week, provided that they are paid not less than one and one-half times their normal rate of pay for all hours worked in excess of forty-eight (48) hours in any one week.

(c) Yard foremen, truck drivers and their helpers may be permitted to work forty-four (44) hours in any one week without the payment of overtime and may be permitted to work forty-eight (48) hours in any one week, provided that they are paid not less than one and one-half times their normal rate of pay for all hours worked in excess of forty-four (44) hours in any one week.

(d) The Code Authority shall submit within thirty (30) days of the approval of this Code as amended, a report which specifically outlines the possibilities of establishing a daily limitation of hours for all classes of employees and of revising Article III, Section 2 (a) and (c) so that hourly restrictions will apply to the watchmen, all branch yard managers, yard foremen, truck drivers and their helpers.

3. *Standard Week.*—Except as to night and Sunday watchmen, no employee shall be permitted to work more than six (6) days in any seven (7) day period.

4. *Employment by Several Employers.*—No employer shall knowingly permit any employee to work for any time which, when added to the time spent at work for another employer or employers in this Trade or any other trade or industry, exceeds the maximum permitted herein.

IV. RATES OF WAGES

1. No employee shall be paid in any period less than the minimum rates per hour hereinafter set forth, except as herein otherwise provided; the minimum rate per hour herein provided shall be applicable to the immediate trade area of cities as defined by the Chamber of Commerce or similar civic body of such cities:

Region no.	Cities of 500,000 population or more	Cities of less than 500,000 population and more than 75,000 population	Cities or places of 75,000 population or less
	<i>Cents</i>	<i>Cents</i>	<i>Cents</i>
1.....	35	30	25
2.....	40	35	30
3.....	45	40	35
4.....	60		

2. (a) Region No. 1 includes the States of: Alabama, Georgia, Florida, North Carolina, South Carolina, Kentucky, Louisiana, Mississippi, Tennessee, Texas, Virginia, West Virginia, Arkansas, New Mexico and Arizona.

(b) Region No. 2 includes the States of: Delaware, Maryland, Colorado, Wyoming, Oklahoma, Utah, Montana, Idaho, Washington, Oregon, Nevada, and Counties of Santa Barbara, Ventura, Los Angeles, Orange, San Diego, Imperial and San Bernardino of the State of California, and the District of Columbia.

(c) Region No. 3 includes the States of: Illinois, Indiana, Pennsylvania, New Jersey, Nebraska, New York (except New York City), Vermont, New Hampshire, Maine, Massachusetts, Connecticut, Rhode Island, Minnesota, North Dakota, South Dakota, Iowa, Ohio, Missouri, Kansas, Wisconsin, Michigan and all counties of California not included in Region No. 2.

(d) Region No. 4 includes the City of New York.

3. Clerical and office employees subject to the provisions of Article III, Section 2, subsection (b) hereof, shall be paid not less than twelve dollars (\$12.00) per forty-eight (48) hour week, clerical and office employees in cities of 500,000 population or more shall be paid not less than at the rate of twenty dollars (\$20.00) per week; in cities of less than 500,000 population and more than 75,000 population, not less than at the rate of fourteen dollars (\$14.00) per week; and in cities and places of 75,000 population or less, not less than at the rate of twelve dollars (\$12.00) per week. Truck drivers in cities of 2,500,000 population or more shall be paid not less than at the rate of 75 cents per hour.

4. This Article establishes minimum rate of pay which shall apply, irrespective of whether an employee is actually compensated on a time rate, piece work or other basis.

V. GENERAL LABOR AND OTHER PROVISIONS

1. No person under eighteen (18) years of age shall be employed in this Trade, except as office boys, office girls or messengers. No person under sixteen (16) years of age shall be employed in this Trade in any capacity. In any state an employer shall be deemed to have complied with these provisions as to age, if he shall have on file a certificate or permit, duly signed by the Authority in such state empowered to issue employment or age certificates or permits showing that the employee is of the required age.

2. Every employer shall provide for the safety and health of employees during the hours and at the places of their employment. Standards for safety and health shall be submitted by the Code Authority to the Board within sixty (60) days after the effective date hereof, and upon their approval by the Board shall constitute integral parts of this Code.

3. No provisions in this Code shall supersede any State or Federal Law which imposes on employers more stringent requirements as to age of employees, wages, hours of work, or as to safety, health, sanitary or general working conditions, or insurance, or fire protection, than are imposed by this Code.

4. All employers shall post and keep posted copies of this Code in conspicuous places accessible to all employees. Every member of the Trade shall comply with all rules and regulations relative to the posting of provisions of Codes of Fair Competition which may from time to time be prescribed by the Board.

5. No employer shall reclassify employees or duties of occupation performed or engage in any other subterfuge so as to defeat the purposes or provisions of the Act or of this Code.

6. No employer shall dismiss or demote any employee for making a complaint or giving evidence with respect to an alleged violation of the provisions of this Code.

7. Female employees performing substantially the same work as male employees shall receive the same rate of pay as male employees.

8. A person whose earning capacity is limited because of age or physical or mental handicap or other infirmity may be employed on light work at a wage below the minimum established by this Code if the employer obtains from the State authority designated by the United States Department of Labor a certificate authorizing his employment at such wages and for such hours as shall be stated in the certificate. Each employer shall file monthly with the Code Authority a list of all such persons employed by him, showing the wages paid to, and the maximum hours of work for such employees.

VI. ADMINISTRATION

1. A Code Authority is hereby established consisting of not more than nine (9) trade members to be selected in the following manner: Seven (7) members shall be elected by the Directors of the National Federation of Builders Supply Associations with the approval of the Board, and two (2) members shall be elected to represent the non-members of federated groups. In the event that the non-members of federated groups fail to elect two (2) members to represent them, they may be appointed by the National Recovery Administration.

2. In addition to membership as above provided, there may be three (3) members, without vote, to be known as Administration members, to be appointed by the Board to serve for such terms as the Board may specify.

3. Each trade or industrial association directly or indirectly participating in the selection or activities of the Code Authority shall (1) impose no inequitable restrictions on membership, and (2) submit to the Board true copies of its articles of association, by-laws, regulations, and any amendments when made thereto, together with such other information as to membership, organization, and activities as the Board may deem necessary to effectuate the purposes of the Act.

4. In order that the Code Authority shall be at all times truly representative of the Trade and in other respects comply with the provisions of the Act, the Board may prescribe such hearings as it may deem proper; and thereafter if it shall find that the Code Authority is not truly representative or does not in other respects comply with the provisions of the Act, may require an appropriate modification of the Code Authority.

5. Nothing contained in this Code shall constitute the members of the Code Authority partners for any purpose. Nor shall any member of the Code Authority be liable in any manner to anyone for any act of any other member, officer, agent or employee of the Code Authority. Nor shall any member of the Code Authority, exercising reasonable diligence in the conduct of his duties hereunder, be liable to anyone for any action or omission to act under this Code, except for his own wilful malfeasance or nonfeasance.

6. If the Board shall at any time determine that any action of the Code Authority or any agency thereof may be unfair or unjust or contrary to the public interest, the Board may require that such action be suspended to afford an opportunity for investigation of

the merits of such action and further consideration by such Code Authority or agency pending final action which shall not be effective unless the Board approves or unless it shall fail to disapprove after thirty (30) days' notice to it of intention to proceed with such action in its original or modified form.

7. Subject to such rules and regulations as may be issued by the Board, the Code Authority shall have the following powers and duties, in addition to those authorized by other provisions of this Code;

(a) To insure the execution of the provisions of this Code and to provide for the compliance of the Trade with the provisions of the Act.

(b) To adopt by-laws and rules and regulations for its procedure.

(c) To obtain from members of the Trade such information and reports as are required for the administration of the Code. In addition to information required to be submitted to the Code Authority, members of the Trade subject to this Code shall furnish such statistical information as the Board may deem necessary for the purposes recited in Section 3 (a) of the Act to such Federal and State agencies as it may designate; provided that nothing in this Code shall relieve any member of the Trade of any existing obligations to furnish reports to any Government agency. No individual report shall be disclosed to any member of the Trade or any other party except to such other governmental agencies as may be directed by the Board.

(d) To use such trade associations and other agencies as it deems proper for the carrying out of any of its activities provided for herein, provided that nothing herein shall relieve the Code Authority of its rights, duties or responsibilities under this Code and that such trade associations and agencies shall at all times be subject to and comply with the orders of the Code Authority and of the National Recovery Administration.

(e) To make recommendations to the Board for the coordination of the administration of this Code and such other Codes, if any, as may be related to or affect members of the Trade.

(f) (1) It being found necessary in order to support the administration of this Code and to maintain the standards of fair competition established hereunder and to effectuate the policy of the Act, the Code Authority is authorized:

(A) To incur such reasonable obligations as are necessary and proper for the foregoing purposes, and to meet such obligations out of funds which may be raised as hereinafter provided and which shall be held in trust for the purposes of the Code.

(B) To submit to the Board for its approval, subject to such notice and opportunity to be heard as it may deem necessary (1) an itemized budget of its estimated expenses for the foregoing purposes, and (2) an equitable basis upon which the funds necessary to support such budget shall be contributed by members of the Trade;

(C) After such budget and basis of contribution have been approved by the Board, to determine and obtain equitable contribution as above set forth by all members of the Trade, and to that end, if necessary, to institute legal proceedings therefor in its own name.

(2) Each member of the Trade shall pay his or its equitable contribution to the expenses of the maintenance of the Code Authority, determined as hereinabove provided, and subject to rules and regulations pertaining thereto issued by the Board. Only members of the Trade complying with the Code and contributing to the expenses of its administration as hereinabove provided, unless duly exempted from making such contributions, shall be entitled to participate in the selection of members of the Code Authority or to receive the benefits of any of its voluntary activities or to make use of any emblem or insignia of the National Recovery Administration.

(3) The Code Authority shall neither incur nor pay any obligation substantially in excess of the amount thereof as estimated in its approved budget, and shall in no event exceed the total amount contained in the approved budget, except upon approval of the Board; and no subsequent budget shall contain any deficiency item for expenditures substantially in excess of prior budget estimates except those which the Board shall have so approved.

(g) To recommend to the Board any action or measures deemed advisable, including further fair trade practice provisions to govern members of the Trade in their relations with each other or with other trades or industries; measures for industrial planning, and stabilization of employment; and including modifications of this Code which shall become effective as part hereof upon approval by the Board after such notice and hearing as it may specify.

(h) To appoint a Trade Practice Committee which shall meet with the Trade Practice Committees appointed under such other Codes as may be related to the Trade for the purpose of formulating fair trade practices to govern the relationships between employers under this Code and under such other Codes to the end that such fair trade practices may be proposed to the Board as amendments to this Code and such other Codes.

(i) To provide appropriate facilities for arbitration, and subject to the approval of the Board, to prescribe rules of procedure and rules to effect compliance with awards and determinations.

8. To approve and submit for the approval of the Board, rules and regulations proposed by truly representative groups of members of the Trade in any competitive areas, provided that such rules and regulations are not inconsistent with this Code. Upon approval by the Board, after such notice and hearings as it may prescribe, such rules and regulations shall constitute integral parts of this Code and be binding upon all members of the Trade operating in such competitive areas.

9. (a) For the administration of this Code, in the case of members of the Trade, whether in whole or in part, who are members of the National Retail Lumber Dealers Association but who are not also members of a federated group of the National Federation of Builders Supply Associations, the Code Authority shall appoint as its agent or representative the same agent or representative as shall have been appointed by the Code Authority for the Code of Fair Competition for the Retail Lumber, Lumber Products, Building Material and Building Specialties Trade for the administration of the Code of Fair competition for which it is the controlling authority.

(b) When the administration of this Code is delegated by the Code Authority of this Code to the agent appointed by the Code Authority for the Code of Fair Competition for Retail Dealers in Lumber, Lumber Products, Building Material, and Building Specialties, the pro rata cost of Administration shall be the same as for all other dealers in Builders Supplies but shall be paid to the last-mentioned Code Authority to be used by them in the Administration of this Code.

10. (a) To appoint within each federated group, in cooperation with the appropriate division under the Code of Fair Competition for the Retail Lumber, Lumber Products, Building Material and Building Specialties Trade, a joint Explanation Committee, with equal representation, of such number as may be deemed advisable. This Committee shall be empowered to explain the provisions of the trade practice rules of the Code of Fair Competition for the Retail Lumber, Lumber Products, Building Material and Building Specialties Trade and of this Code insofar as such rules affect members of the Retail Lumber, Lumber Products, Building Material and Building Specialties Trade and members of the Builders Supplies Trade. The explanations of this Joint Committee shall be subject to appeal as hereinafter provided.

(b) The Code Authority shall appoint a National Joint Explanation Committee in cooperation with the Code Authority for the Retail Lumber, Lumber Products, Building Material and Building Specialties Trade, with equal representation, of such number as the two Code Authorities shall jointly determine. This Committee shall review appeals from the explanations of the Joint Explanation Committees appointed within the federated groups. The findings of such National Joint Explanation Committee shall be subject to review as may be prescribed by the Board in accordance with the law.

(c) In the event of any disputes concerning the jurisdiction of this Code, the Code Authority shall appoint a committee to meet with a similarly appointed Committee of any related industry or trade, and when so meeting to act as a Coordination Board to adjust disputes as to the jurisdiction of the respective Codes. Each trade or industry shall be equally represented. In addition to the representatives appointed by the respective Code Authorities, each Coordination Board may elect one additional member, or, upon failure so to select, one additional member may be appointed by the Board, but such member shall have authority to vote only in the event of a tie. A determination of such Coordination Board shall be forwarded immediately to the National Recovery Administration and shall become effective upon approval thereby. In the event such Coordination Board fails to act or agree, the matter shall be submitted to the Board for final determination.

VII. VOLUNTARY AGREEMENT MEMBER

Recognizing that the violation by a member of any provision of this Code will disrupt the normal course of fair competition in the Trade and cause serious damage to others, and that it will be impossible accurately to determine the amount of such damage, it is hereby provided that those members who may desire to do so may

enter into an agreement among themselves embodying the following provisions:

1. Each member violating any provision of this Code shall pay to the Treasurer of the Code Authority, as an individual and not as Treasurer, in trust, as and for liquidated damages, upon determination of violation by the Board, or any impartial agency or person nominated by the Code Authority or designated by the Assenters to this agreement and approved by the Board, amounts as set forth below:

(a) For the violation of any wage provision, an amount equal to the difference between the wages which have been paid and the wages which would have been paid if the member had complied with the applicable provisions of the Code;

(b) For the violation of any hour provision, an amount equal to the wages payable for the overtime at the regular rate payable under the terms of the Code, to the employee who worked overtime;

(c) For the violation of any labor provision of the Code other than an hour or wage provision, one hundred dollars;

(d) For the violation of any provision of the Code (other than a labor provision) involving a transaction incidental to or connected with a sale of any product of the Trade, an amount equal to thirty (30) per cent of the actual selling price of the product sold in violation of any such provision, or of the price at which the product should have been sold under the Code, if determinable, whichever is the higher;

(e) For the violation of any provision of the Code (other than a labor provision) not involving a transaction incidental to or connected with a sale of any product of the Trade, one hundred dollars.

2. All amounts so paid to or collected by the Treasurer of the Code Authority, under the provisions of this Article, shall be applied by him as follows: First, if the violation shall have been of a labor provision of the Code, equitable distribution of all damages paid therefor shall be made among all employees directly affected by such violation; second, if the violation shall have been of a code provision other than a labor provision, the damages arising therefrom shall be utilized to defray proper expenses of code administration, and the balance, if any, remaining in the hands of the Treasurer shall be distributed semi-annually among members of the Trade who have assented hereto and who have not been determined to have been guilty of a violation of a code provision during the preceding semi-annual period, on the basis of the most recent assessment made against members of the Trade for the expense of code administration.

3. Assent to this Article by any member shall be evidenced by a signed statement signifying assent, filed with the Code Authority. Failure to assent to this Article shall not deprive any member of any other right or privilege under the Code. By so assenting, each member agrees with every other member and the Treasurer, individually, (1) that violation of a code provision shall breach this agreement and shall render the violator liable for the payment of liquidated damages as herein provided, (2) all rights and causes of action arising hereunder are assigned to the Treasurer, individually and in trust, and (3) that the Treasurer, as such assignee and as attorney in fact for each assenting member, may take all proper legal action concerning damages found due hereunder.

4. The Code Authority may waive liability for payment of liquidated damages for any violation it finds to have been innocently made and resulting in no material injury.

5. The Treasurer of the Code Authority, as an individual, and not as Treasurer, by accepting office, accepts the trust established by this contract and agrees to perform the duties of Trustee hereunder until his successor in office may have been appointed.

6. Nothing contained herein shall be construed or applied to (a) deprive any person of any right or right of action arising out of this Code, or (b) relieve any member of the Trade from any contractual or legal obligations arising out of this Code or of the Act or otherwise; nor shall violation of this agreement by an assenting member be deemed a violation of the Code, so as to subject the violator to any consequence arising under Section 3 (b), Section 3 (c), or Section 3 (f) of the National Industrial Recovery Act, nor to any criminal prosecution of any kind.

VIII. AFFIDAVITS OF COMPLIANCE

Each member of the Trade shall submit to the Code Authority or its authorized agent upon demand, but not more frequently than monthly, an affidavit properly executed before a Notary Public, certifying that he has complied with the provisions of this Code setting forth the schedule of rates of wages, hours of labor, and maintenance of all other rules as set forth within this Code. These affidavits shall be filed with the Code Authority and shall be available at all times to the inspection of the National Industrial Recovery Board.

IX. OPEN PRICE, COSTS AND PRICE CUTTING, AND COST FINDING AND ACCOUNTING

1. *Open Price.*—(a) Each member of the Trade shall file with a confidential and disinterested agent of the Code Authority, or if none, then with such an agent designated by the Board identified lists of all of his prices, discounts, rebates, allowances, and all other terms or conditions of sale, hereinafter in this article referred to as "price terms", which lists shall completely and accurately conform to and represent the individual pricing practices of said member. Such lists shall contain the price terms for all such standard products of the Trade as are sold or offered for sale by said member and for such non-standard products of said member as shall be designated by the Code Authority. Said price terms shall in the first instance be filed within ten (10) days after the effective date of this provision. Price terms and revised price terms shall become effective immediately upon receipt thereof by said agent. Immediately upon receipt thereof, said agent shall by telegraph or other equally prompt means notify said member of the time of such receipt. Such lists and provisions, together with the effective time thereof, shall upon receipt be immediately and simultaneously distributed to all members of the Trade and to all of their customers who have applied therefor and have offered to defray the cost actually incurred by the Code Authority in the preparation and distribution thereof and be available for inspection by any of their customers at the

office of such agent. Said lists or revisions or any part thereof shall not be made available to any person until released to all members of the Trade and their customers, as aforesaid; provided, that prices filed in the first instance shall not be released until the expiration of the aforesaid ten (10) day period after the effective date of this provision. The Code Authority shall maintain a permanent file of all price terms filed as herein provided, and shall not destroy any part of such records except upon written consent of the Board. Upon request the Code Authority shall furnish to the Board or any duly designated agent of the Board copies of any such lists or revisions of price terms.

(b) When any member of the Trade has filed any revision, such member shall not file a higher price within forty-eight (48) hours.

(c) No member of the Trade shall sell or offer to sell any products/services of the Trade for which price terms have been filed pursuant to the provisions of this Article, except in accordance with such price terms.

(d) No member of the Trade shall enter into any agreement, understanding, combination or conspiracy to fix or maintain price terms nor cause or attempt to cause any member of the Trade to change his price terms by the use of intimidation, coercion, or any other influence inconsistent with the maintenance of the free and open market which it is the purpose of this Article to create.

2. *Costs and Price Cutting.*—(a) The standards of fair competition for the Trade with reference to pricing practices are declared to be as follows:

(1) Wilfully destructive price cutting is an unfair method of competition and is forbidden. Any member of the Trade or of any other trade or industry or the customers of either may at any time complain to the Code Authority that any filed price constitutes unfair competition as destructive price cutting, imperiling small enterprise or tending toward monopoly or the impairment of code wages and working conditions. The Code Authority shall within five (5) days afford an opportunity to the member filing the price to answer such complaint and shall within fourteen (14) days make a ruling or adjustment thereon. If such ruling is not concurred in by either party to the complaint, all papers shall be referred to the National Recovery Administration and a report thereon shall be made to the Board.

(2) When no declared emergency exists as to any given product, there is to be no fixed minimum basis for prices. It is intended that sound cost estimating methods should be used and that consideration should be given to costs in the determination of pricing policies.

(3) When an emergency exists as to any given product, sale below the stated minimum price of such product, in violation of Subsection (b) hereof, is forbidden.

(b) *Emergency Provisions:*

(1) If the Board, after investigation shall at any time find both (1) that an emergency has arisen within the Trade adversely affecting small enterprises or wages or labor conditions, or tending toward monopoly or other acute conditions which tend to defeat the purposes of the Act; and (2) that the determination of the stated minimum price for a specified product/service within the Trade for a

limited period is necessary to mitigate the conditions constituting the emergency and to effectuate the purposes of the Act, the Code Authority may cause an impartial agency to investigate costs and to recommend to the Board a determination of the stated minimum price of the product/service affected by the emergency and thereupon the National Industrial Recovery Board may proceed to determine such stated minimum price.

(2) When the Board shall have determined such stated minimum price for a specified product/service for a stated period, which price shall be reasonably calculated to mitigate the conditions of such emergency and to effectuate the purposes of the National Industrial Recovery Act, it shall publish such price. Thereafter, during such stated period, no member of the Trade shall sell such specified products at a net realized price below said stated minimum price and any such sale shall be deemed destructive price cutting. From time to time, the Code Authority may recommend review or reconsideration or the Board may cause any determinations hereunder to be reviewed or reconsidered and appropriate action taken.

3. *Cost Finding and Accounting.*—(a) *Cost Finding.*—The Code Authority shall cause to be formulated methods of cost finding and accounting capable of use by all members of the Trade, and shall submit such methods to the Board for review. If approved by the Board, full information concerning such methods shall be made available to all members of the Trade. Thereafter, each member of the Trade shall utilize such methods to the extent found practicable. Nothing herein contained shall be construed to permit the Code Authority, any agent thereof, or any member of the Trade to suggest uniform additions, percentages or differentials or other uniform items of cost which are designed to bring about arbitrary uniformity of costs or prices.

X. RULES OF FAIR PRACTICE

1. No member of the Trade shall secretly offer or make any payment or allowance of rebate, refund, commission, credit, unearned discount, or excess allowance, whether in the form of money or otherwise, nor shall a member of the Trade secretly offer or extend to any customer any special service or privilege not extended to all customers of the same class, for the purpose of influencing a sale.

2. Uniform contracts and maximum terms of sale for each competitive area may be established by the Code Authority or its authorized agent after approval thereof by the Board, and any deviation from these contracts or any terms of sale in excess of such maximum terms shall constitute an unfair competitive practice.

3. No member of the Trade shall accept any secret rebate, refund, commission, credit, unearned discount, or excess allowance, whether in the form of money or otherwise, not extended to all members of the Trade of the same class under like terms and conditions.

4. No member of the Trade shall defame a competitor by falsely imputing to him dishonorable business conduct, inability to perform contracts, questionable credit standing, or by other false representation, or by falsely disparaging the grade or quality of his goods.

5. No member of the Trade shall wilfully induce or attempt to induce the breach of existing contracts between competitors and their customers by any false or deceptive means, or interfere with or obstruct the performance of any such contractual duties or services by any such means, with the purpose and effect of hampering, injuring or embarrassing competitors in their business.

6. No member of the Trade shall give, permit to be given, or directly offer to give, anything of value for the purpose of influencing or rewarding the action of any employee, agent, or representative of another in relation to the business of the employer of such employee, the principal of such agent or the represented party, without knowledge of such employer, principal or party. This provision shall not be construed to prohibit free and general distribution of articles commonly used for advertising except so far as such articles are actually used for commercial bribery as hereinabove defined.

7. No member of the Trade shall induce a competitor's salesman or credit man to leave his employment for the purpose of injuring a competitor's business.

8. No member of the Trade shall publish advertising (whether printed, radio, display, or of any other nature) which is misleading or inaccurate in any material particular, nor shall any member of the Trade in any way misrepresent any builders supplies (including, but without limitation, its use, trade mark, grade, quantity, quality, origin, size, substance, character, nature, finish, material content or preparation) or credit terms, values, policies, services, or the nature or form of the business conducted.

9. No member of the Trade shall agree or guarantee to furnish sufficient quantities of builders supplies for any building or construction operation at a lump sum price.

10. No member of the Trade shall knowingly withhold from or insert in any quotation or invoice any statement that makes it inaccurate in any material particular.

11. No member of the Trade shall publish or circulate unjustified or unwarranted threats of legal proceedings which tend to or have the effect of harassing competitors or intimidating their customers.

12. No member of the Trade shall handle any builders supplies (1) which either do not comply with any and all standards, including, without limitation, standards as to quality, quantity, size and/or performance, as well as any and all labeling requirements, incorporated in the separate approved codes of industries/trades relating to such products as are handled by members of this Trade, or (2) which do not bear indication that they are non-standard, when standards have been adopted for the types in question, or (3) which have not either been manufactured or sold by a vendor who does not represent that he is in full compliance with the approved code of fair competition, applicable to the industry or trade in which the vendor is engaged, nor shall any member of the Trade sell or offer to sell any goods to any contractor or consumer who has failed to comply with his respective code; provided that no member of the Trade, exercising due diligence in such handling of builders supplies to comply with the provision hereof, shall be deemed in violation hereof. Delivery of a certificate of such vendor that he or it is complying in every particular with the code of fair competition appli-

cable to such vendor, the display of proper N. R. A. insignia or the publication in a newspaper or periodical of general circulation of such certificate of compliance or insignia shall constitute a good and sufficient representation of compliance hereunder.

(a) Upon application, or upon its own motion, the Board may grant exceptions or exemptions from provisions hereof if it shall appear, (1) that the vendor of any such goods or services is not subject to a code of fair competition, agreement or license approved under the Act; or (2) that compliance herewith would create undue hardship or injustice or would not tend to effectuate the purposes of this Code or the policy of the Act.

(b) No member of the Trade shall make or cause to be presented or published any such representation which shall be false in any material particular.

XI. MONOPOLIES

No provision of this Code shall be so applied as to permit monopolies or monopolistic practices or to eliminate, oppress, or discriminate against small enterprises.

XII. EFFECTIVE DATE

All provisions of this Code shall become effective and operative ten (10) days after the approval thereof by the President of the United States.

XIII. CHANGES IN THE CODE

1. This Code and all the provisions thereof are expressly made subject to the right of the President, in accordance with the provisions of Subsection (b) of Section X of the Act, from time to time to cancel or modify any order, approval, license, rule or regulation issued under Title I of said Act.

2. Such of the provisions of this Code as are not required to be included herein by the Act, may, with the approval of the Board, after such notice and hearing as it shall prescribe, be modified or eliminated in such manner as may be indicated by the needs of the public, by changes in circumstances, or by experience.

Approved Code No. 37—Amendment No. 2.
Registry No. 1013-3-02.



